



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Christopher W.
Blackburn et al.

Examiner: Reginald A. Renwick

Serial No.: 10/788,902

Group Art Unit: 3714

Filed: February 26, 2004

Docket: 1842.022US1

For: GAME UPDATE SERVICE IN A SERVICE-ORIENTED GAMING NETWORK
ENVIRONMENT

APPEAL BRIEF UNDER 37 CFR § 41.37

Mail Stop Appeal Brief- Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Appeal Brief is presented in support of the Notice of Appeal to the Board of Patent Appeals and Interferences, filed on November 6, 2008, from the Final Rejection of claims 1-31 of the above-identified application, as set forth in the Final Office Action mailed on August 6, 2008.

The Commissioner of Patents and Trademarks is hereby authorized to charge Deposit Account No. 19-0743 in the amount of \$540.00 which represents the requisite fee set forth in 37 C.F.R. § 41.20(b)(2). The Appellants respectfully request consideration and reversal of the Examiner's rejections of pending claims.

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1. REAL PARTY IN INTEREST

The real party in interest of the above-captioned patent application is the assignee, WMS GAMING INC.

2. RELATED APPEALS AND INTERFERENCES

The following patent applications are related to the above-identified application, are currently appealed to the Board, and may directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. No decisions have been rendered by the Board as of the filing of this Appeal Brief.

<u>App. Serial #</u>	<u>Attorney Docket</u>	<u>Title</u>
10/813,653	1842.017US1	EVENT MANAGEMENT SERVICE IN A SERVICE-ORIENTED GAMING NETWORK ENVIRONMENT
10/562,411	1842.019US1	GAMING NETWORK ENVIRONMENT PROVIDING A CASHLESS GAMING SERVICE
10/788,903	1842.020US1	A SERVICE-ORIENTED GAMING NETWORK ENVIRONMENT
10/788,661	1842.021US1	GAMING MANAGEMENT SERVICE IN A SERVICE-ORIENTED GAMING NETWORK ENVIRONMENT
10/788,902	1842.022US1	GAME UPDATE SERVICE IN A SERVICE-ORIENTED GAMING NETWORK ENVIRONMENT
10/789,957	1842.023US1	PROGRESSIVE SERVICE IN A SERVICE-ORIENTED GAMING NETWORK ENVIRONMENT
10/794,723	1842.024US1	DISCOVERY SERVICE IN A SERVICE-ORIENTED GAMING NETWORK ENVIRONMENT
10/794,422	1842.025US1	BOOT SERVICE IN A SERVICE-ORIENTED GAMING NETWORK ENVIRONMENT
10/796,562	1842.027US1	AUTHORIZATION SERVICE IN A SERVICE-ORIENTED GAMING NETWORK
10/802,700	1842.028US1	NAME SERVICE IN A SERVICE-ORIENTED GAMING NETWORK ENVIRONMENT
10/802,701	1842.029US1	TIME SERVICE IN A SERVICE-ORIENTED GAMING NETWORK ENVIRONMENT
10/802,699	1842.030US1	ACCOUNTING SERVICE IN A SERVICE ORIENTED GAMING NETWORK ENVIRONMENT
10/802,537	1842.031US1	MESSAGE DIRECTOR SERVICE IN A SERVICE-ORIENTED GAMING NETWORK ENVIRONMENT

3. STATUS OF THE CLAIMS

The present application was filed on February 26, 2004 with claims 1-31. A non-final Office Action mailed November 21, 2006 rejected claims 1-31. A first final Office Action mailed May 17, 2007 rejected claims 1-31. A Request for Continued Examination (RCE) was filed August 17, 2007. A second non-final Office Action mailed October 30, 2007 rejected claims 1-31. A Final Office Action (hereinafter “the Final Office Action”) was mailed August 6, 2008 rejecting claims 1-31. Pending claims 1-31 stand at least twice rejected, remain pending, and are the subject of the present Appeal.

4. STATUS OF AMENDMENTS

No amendments have been made subsequent to the Final Office Action mailed August 6, 2008.

5. SUMMARY OF CLAIMED SUBJECT MATTER

Some aspects of the present inventive subject matter include, but are not limited to, systems and methods that provide a game update service in a service-oriented gaming network environment. In general, the independent claims recite systems and methods that provide a three party handshake for providing a game update service on a wagering game network. The game update service first sends service information to a discovery agent, the discovery agent authorizes and authenticates the game update service and in response publishes the service information, and a client such as a wagering game machine desiring to use the game update service obtains the service information from the discovery agent and uses the service information to contact and utilize the game update service.

This summary is presented in compliance with the requirements of Title 37 C.F.R. § 41.37(c)(1)(v), mandating a “concise explanation of the subject matter defined in each of the independent claims involved in the appeal . . .” Nothing contained in this summary is intended to change the specific language of the claims described, nor is the language of this summary to be construed so as to limit the scope of the claims in any way.

INDEPENDENT CLAIM 1

1. A method for providing a game update service in a gaming network, the method comprising:

 sending service information for the game update service from the game update service to a discovery agent on the gaming network, wherein the game update service provides game content for a plurality of gaming machines on the gaming network, wherein in response to a wager at a gaming machine of the plurality of gaming machines the gaming machine depicts indicia representative of a randomly selected outcome of a wagering game; [*see e.g., FIGs. 1-2, element 10; FIG. 3, elements 302, 304 and 306; Fig. 5B, elements 502, 503 and 521; page 5, line 12 to page 6, line 18; page 17, line 22 to page 18, line 2; and page 20, lines 16-17*]

 determining by the discovery agent if the game update service is authentic and authorized; [*see e.g., Fig. 5B, elements 503, 504, 522 and 523; page 7, line 28 to page 8, line 3; and page 20, lines 18-20*]

in response to determining that the game update service is authentic and authorized, publishing the service information to a service repository to make the game update service available on the gaming network; *[see e.g., FIG. 3, elements 324 and 326; FIG. 5B, elements 503, 524; page 11, line 21 to page 12, line 4; and page 20, lines 23-25]*

receiving by the discovery agent a request for the location of the game update service from the gaming machine; *[see e.g., FIG. 3, elements 302, 306, 312, 326 and 332; FIG. 5B, elements 501, 503, 525; page 11, line 21 to page 12, line 4; and page 20, lines 26-28]*

returning the service information for the game update service to the gaming machine; *[see e.g., FIG. 3, elements 302, 306, 312, 326 and 332; FIG. 5B, elements 501, 503 and 526-528; page 11, line 21 to page 12, line 4; and page 21, lines 1-5]*

using the service information for the game update service to register the gaming machine with the game update service; *[see e.g., FIG. 3, elements 302, 304 and 334; FIG. 5B, elements 501, 502 and 529; page 17, lines 1-7; and page 21, lines 6-7]*

verifying that the gaming machine is authorized to utilize the game update service; and *[see e.g., FIG. 2, element 232; FIG. 5B, elements 502, 504, 530-531; page 6, line 25 to page 7, line 2; and page 21, lines 8-11]*

processing one or more service requests between the gaming machine and the game update service to provide game content on the gaming machine. *[see e.g., FIG. 3, elements 302, 304 and 334; FIG. 4, element 400; FIG. 5B, elements 501, 502, 533-538; page 12, line 12 to page 13, line 26; page 16, lines 22-29; and page 21, line 14 to page 22, line 4]*

INDEPENDENT CLAIM 8

8. A method for updating game content on a gaming machine via a game update service in a gaming network, the method comprising:

issuing a request from the gaming machine to a discovery agent to discover a service description for the game update service, wherein the discovery agent receives the service description from the game update service and authenticates and authorizes the game update service, and wherein in response to a wager the gaming machine depicts indicia representative of a randomly selected outcome of a wagering game; *[see e.g., FIGS. 1-2, element 10; FIG. 3, elements 302, 304, 324 and 326; FIG. 5B, elements 502, 503, 504 and 521-524; page 5, line 12 to page 6, line 18; page 7, line 28 to page 8, line 3; page 11, line 21 to page 12, line 4; page 17, line 22 to page 18, line 2; and page 20, lines 16 to 25]*

receiving the service description from the discovery agent; *[see e.g., FIG. 3, elements 302, 306, 312, 326 and 332; FIG. 5B, elements 501, 503 and 526-528; page 11, line 21 to page 12, line 4; and page 21, lines 1-5]*

using the service description to register the gaming machine with the game update service, wherein the game update service verifies that the gaming machine is authorized to utilize the game update service; and *[see e.g., FIG. 2, element 232; FIG. 3, elements 302, 304 and 334; FIG. 5B, elements 501, 502 504 and 529-531; page 6, line 25 to page 7, line 2; page 17, lines 1-7; and page 21, lines 6-11]*

processing one or more service requests between the gaming machine and the game update service. *[see e.g., FIG. 3, elements 302, 304 and 334; FIG. 4, element 400; FIG. 5B, elements 501, 502, 533-538; page 12, line 12 to page 13, line 26; page 16, lines 22-29; page 21, line 14 to page 22, line 4]*

INDEPENDENT CLAIM 13

13. A gaming network system providing a game update service, the gaming network system comprising:

a game update service communicably coupled to a gaming network, wherein the game update service provides game content to a plurality of gaming machines on the a gaming network; and [see e.g., FIGs. 1 and 2, element 10; FIG. 5B elements 501 and 502; page 5, line 12 to page 6, line 18; page 7, lines 11-17; page 17, line 22 to page 18, line 2]

a discovery agent communicably coupled to the gaming network, wherein the discover agent is operable to: [see e.g., FIG. 3, element 306; FIG. 5B, element 503; page 11, line 21 to page 12, line 4]

receive service information from the game update service, [see e.g., FIG. 3, elements 304, 322 and 330; FIG. 5B, element 521; page 11, line 21 to page 12, line 4; page; page 20, lines 16-17]

determine if the game update service is authentic and authorized for the gaming network, and [see e.g., Fig. 5B, elements 503, 504, 522 and 523; page 7, line 28 to page 8, line 3; and page 20, lines 18-20]

publish the service information to a service repository to make the game update service available on the gaming network; [see e.g., FIG. 3, elements 324 and 326; FIG. 5B, elements 503, 524; page 11, line 21 to page 12, line 4; and page 20, lines 23-25]

wherein at least one gaming machine of the plurality of gaming machines communicably coupled to the gaming network is operable to issue a request for the location of the progressive service to the discovery agent and user the service information received from the discovery agent to issue a registration request to the game update service; and [see e.g., FIG. 3, elements 302, 306, 312, 326, 332 and 334; FIG. 5B, elements 501, 502, 503 and 525-529; page 11, line 21 to page 12, line 4; page 17, lines 1-7; and page 20, line 26 to page 21, line 7]

wherein the game update service is operable to:

receive registration requests from the at least one gaming machine, [see e.g., FIG. 3, elements 302, 304 and 334; FIG. 5B, elements 501, 502 and 529; page 17, lines 1-7; and page 21, lines 6-7]

verify that the at least one gaming machine is authorized to utilize the game update service, and [see e.g., FIG. 2, element 232; FIG. 5B, elements 502, 504, 530-531; page 6, line 25 to page 7, line 2; and page 21, lines 8-11]

process service requests between the gaming machine and the game update service. [see e.g., FIG. 3, elements 302, 304 and 334; FIG. 4, element 400; FIG. 5B, elements 501, 502, 533-538; page 12, line 12 to page 13, line 26; page 16, lines 22-29; and page 21, line 14 to page 22, line 4]

INDEPENDENT CLAIM 20

20. A computer-readable medium having computer executable instructions for performing a method for providing a game update service in a gaming network, the method comprising:

 sending service information for the game update service from the game update service to a discovery agent on the gaming network, wherein the game update service provides game content for a plurality of gaming machines on the gaming network, wherein in response to a wager at a gaming machine of the plurality of gaming machines the gaming machine depicts indicia representative of a randomly selected outcome of a wagering game; [see e.g., FIGs. 1-2, element 10; FIG. 3, elements 302, 304 and 306; FIG. 5B, elements 502, 503 and 521; page 5, line 12 to page 6, line 18; page 17, line 22 to page 18, line 2; and page 20, lines 16-17]

 determining by the discovery agent if the game update service is authentic and authorized; [see e.g., FIG. 5B, elements 503, 504, 522 and 523; page 7, line 28 to page 8, line 3; and page 20, lines 18-20]

 in response to determining that the game update service is authentic and authorized, publishing the service information to a service repository to make the game update service available on the gaming network; [see e.g., FIG. 3, elements 324 and 326; FIG. 5B, elements 503, 524; page 11, line 21 to page 12, line 4; and page 20, lines 23-25]

 receiving by the discovery agent a request for the location of the game update service from the gaming machine; [see e.g., FIG. 3, elements 302, 306, 312, 326 and 332; FIG. 5B, elements 501, 503, 525; page 11, line 21 to page 12, line 4; and page 20, lines 26-28]

returning the service information for the game update service to the gaming machine; [see e.g., FIG. 3, elements 302, 306, 312, 326 and 332; FIG. 5B, elements 501, 503 and 526-528; page 11, line 21 to page 12, line 4; and page 21, lines 1-5]

using the service information for the game update service to register the gaming machine with the game update service; [see e.g., FIG. 3, elements 302, 304 and 334; FIG. 5B, elements 501, 502 and 529; page 17, lines 1-7; and page 21, lines 6-7]

verifying that the gaming machine is authorized to utilize the game update service; and [see e.g., FIG. 2, element 232; FIG. 5B, elements 502, 504, 530-531; page 6, line 25 to page 7, line 2; and page 21, lines 8-11]

processing one or more service requests between the gaming machine and the game update service. [see e.g., FIG. 3, elements 302, 304 and 334; FIG. 4, element 400; FIG. 5B, elements 501, 502, 533-538; page 12, line 12 to page 13, line 26; page 16, lines 22-29; and page 21, line 14 to page 22, line 4]

INDEPENDENT CLAIM 27

27. A computer-readable medium having computer executable instructions for performing a method for updating game content on a gaming machine via a game update service in a gaming network, the method comprising:

issuing a request from the gaming machine to a discovery service to discover a service description for the game update service, wherein the discovery service receives the service description from the game update service and authenticates and authorizes the game update service, and wherein in response to a wager the gaming machine depicts indicia representative of a randomly selected outcome of a wagering game; [see e.g., FIGs. 1-2, element 10; FIG. 3, elements 302, 304, 324 and 326; FIG. 5B, elements 502, 503, 504 and 521-524; page 5, line 12 to page 6, line 18; page 7, line 28 to page 8, line 3; page 11, line 21 to page 12, line 4; page 17, line 22 to page 18, line 2; and page 20, lines 16 to 25]

receiving the service description from the discover agent; [see e.g., FIG. 3, elements 302, 306, 312, 326 and 332; FIG. 5B, elements 501, 503 and 526-528; page 11, line 21 to page 12, line 4; and page 21, lines 1-5]

using the service description to register the gaming machine with the game update service, wherein the game update service verifies that the gaming machine is authorized to utilize the game update service; and [see e.g., FIG. 2, element 232; FIG. 3, elements 302, 304 and 334; FIG. 5B, elements 501, 502 504 and 529-531; page 6, line 25 to page 7, line 2; page 17, lines 1-7; and page 21, lines 6-11]

processing one or more service requests between the gaming machine and the game update service. [see e.g., FIG. 3, elements 302, 304 and 334; FIG. 4, element 400; FIG. 5B, elements 501, 502, 533-538; page 12, line 12 to page 13, line 26; page 16, lines 22-29; page 21, line 14 to page 22, line 4]

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gatto (U.S. Patent 6,916,247, hereinafter “Gatto”) in view of Rowe (U.S. Patent 6,645,077, hereinafter “Rowe ‘077”) in view of Rowe (U.S. Patent 7,131,909, hereinafter Rowe ‘909) in view of Wesley (U.S. Patent 7,039,701, hereinafter “Wesley”) and in view of Nguyen (U.S. Patent 5,638,448, hereinafter “Nguyen”).

7. ARGUMENT

A) The Applicable Law under 35 U.S.C. § 103

The determination of obviousness under 35 U.S.C. § 103 is a legal conclusion based on factual evidence. *See Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.*, 411 F.3d 1332, 1336-37 (Fed.Cir. 2005). The legal conclusion that a claim is obvious within § 103(a) depends on at least four underlying factual issues set forth in *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966). The underlying factual issues set forth in *Graham* are as follows: (1) the scope and content of the prior art; (2) differences between the prior art and the claims at issue; (3) the level of ordinary skill in the pertinent art; and (4) evaluation of any relevant secondary considerations.

The Examiner has the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir.1988). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested, by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974) ; M.P.E.P. § 2143.03. "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970) ; M.P.E.P. § 2143.03. As part of establishing a *prima facie* case of obviousness, the Examiner's analysis must show that some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead an individual to combine the relevant teaching of the references. *Id.* To facilitate review, this analysis should be made explicit. *KSR Int'l v. Teleflex Inc., et al.*, 127 S.Ct. 1727; 167 L.Ed 2d 705; 82 USPQ2d 1385 (2007) (citing *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006)).

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983); *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1985); MPEP § 2141.02. The Examiner must also recognize and consider not

only the similarities but also the critical differences between the claimed invention and the prior art. *In re Bond*, 910 F.2d 831, 834, 15 U.S.P.Q.2d (BNA) 1566, 1568 (Fed. Cir. 1990), *reh'g denied*, 1990 U.S. App. LEXIS 19971 (Fed. Cir. 1990).

The Federal Circuit has stated:

Obviousness is tested by "what the combined teaching of the references would have suggested to those of ordinary skill in the art." *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 878 (CCPA 1981)). But it "cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination." *ACS Hosp. Sys.*, 732 F.2d at 1577, 221 USPQ at 933. And "teachings of references can be combined *only* if there is some suggestion or incentive to do so." *Id.* (emphasis in original).

In re Fine, 837 F.2d 1071; 5 USPQ2d 1596 (Fed. Cir. 1988).

The test for obviousness under §103 must take into consideration the invention as a whole; that is, one must consider the particular problem solved by the combination of elements that define the invention. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1985). The Examiner must, as one of the inquiries pertinent to any obviousness inquiry under 35 U.S.C. §103, recognize and consider not only the similarities but also the critical differences between the claimed invention and the prior art. *In re Bond*, 910 F.2d 831, 834, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990), *reh'g denied*, 1990 U.S. App. LEXIS 19971 (Fed. Cir. 1990). The fact that a reference teaches away from a claimed invention is highly probative that the reference would not have rendered the claimed invention obvious to one of ordinary skill in the art. *Stranco Inc. v. Atlantes Chemical Systems, Inc.*, 15 USPQ2d 1704, 1713 (Tex. 1990). When the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious. *KSR Int'l v. Teleflex Inc., et al.*, 127 S.Ct. 1727; 167 L.Ed 2d 705; 82 USPQ2d 1385 (2007).

Further, conclusions of obviousness must be based on facts, not generality. *In re Warner*, 379 F.2d 1011, 1017 (C.C.P.A. 1967); *In re Freed*, 425 F.2d 785, 787 (C.C.P.A. 1970). In fact, there must be a rational underpinning grounded in evidence to support the legal conclusion of obviousness. The Federal Circuit has stated that, "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with

some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006), citing *In re Lee*, 61 USPQ2d 1430 (Fed. Cir. 2002); 72 FR 57527-28 (Oct. 10, 2007).

B) The Application of 35 U.S.C. § 103 to the Rejection of Claims 1-31

Claims 1-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gatto (U.S. 6,916,247) in view of Rowe (U.S. 6,645,077, hereinafter "Rowe '077") in view of Rowe (U.S. 7,131,909; hereinafter "Rowe '909") in view of Wesley (U.S. 7,039,701) and in view of Nguyen (U.S. 5,638,448).

In view of the differences between Appellant's claims at issue and the cited references, Appellant respectfully submits the claims are not obvious in view of Gatto, Rowe '077, Rowe '909, Wesley and Nguyen. In general, the independent claims recite systems and methods that provide a three party handshake for providing a game update service on a wagering game network. The game update service first sends service information to a discovery agent, the discovery agent authorizes and authenticates the game update service and in response publishes the service information, and a client such as a wagering game machine desiring to use the game update service obtains the service information from the discovery agent and uses the service information to contact the game update service. Appellant respectfully submits that when the claims are considered as a whole, the cited references do not teach or suggest the inventive subject matter presented in the independent claims.

For example, independent claim 1 recites "determining by the discovery agent if the game update service is authentic and authorized." Claim 1 further recites "in response to determining that the game update service is authentic and authorized, publishing the service information to a service repository to make the game update service available on the gaming network." Independent claims 8, 13, 20 and 27 recite similar language regarding a discovery agent that determines if a game update service is authentic and authorized and if so, publishing service information regarding the game update service. The Final Office Action correctly states that Gatto does not disclose the recited language. However, the Final Office Action goes on to assert that Wesley, at column 18, lines 52-67; column 19, lines 14-19; and column 20, lines 1-10

discloses the recited language. Appellant respectfully disagrees with this interpretation of Wesley. Wesley discloses the use of a UDDI registry to perform discovery and publication of web services (see e.g., column 8, lines 13-16). However, nothing in the cited section of Wesley, nor in any other portion of Wesley teaches that the UDDI registry authenticates or authorizes a service prior to publishing service information for a service (i.e., “upon determining that the game update service is authentic and authorized”). First, the system in Wesley is directed to using node reputation to determine whether to allow a node to perform management functions and does not refer in any way to authenticating and authorizing services.

Second, the system in Wesley appears to publish information for a node, and then later relies on the node’s reputation to determine if the node is allowed to perform management functions (see e.g., column 3, lines 23-31). This is the opposite of Appellant’s claimed invention, in which the service is authorized and authenticated prior to its availability being published. In fact, the cited section of Wesley supports the fact that node identities are published prior to their authentication and authorization. The systems and methods in Wesley build a map of peer nodes in a peer-to-peer (P2P) network using a “spy message” protocol in which nodes that have indicated they are “alive” are asked to propagate “alive requests” to other nodes in the network and uses the responses to build a network topology. Nothing in the cited section nor in any other portion of Wesley indicates that the map building process authenticates or authorizes any nodes in the P2P network prior to their publication in any registry. Rather, the map is built and the system later relies on the reputation of a node to determine if function will be allowed or where queries are to be sent. This is quite different from the operation of Appellant’s claimed invention, in which a service is not even allowed to be published on a network until it has been authorized and authenticated. While Wesley does disclose that authentication may be used on messages to determine that the message is from who it says it is (see e.g., column 22, lines 5-22), Wesley does not disclose authentication of a service itself. Further, the authentication in Wesley is done after the fact, that is, after the node is “published” in the map. To use an old adage, this is like locking the barn door after the horse has left the barn. In Applicant’s claimed invention, the barn door is locked (e.g., a service is not ever published) before any damage can be done by an unauthorized or unauthenticated service.

In view of the above, Wesley fails to teach or suggest publishing a service upon authentication or authorization by a discovery agent. Further, Appellant has reviewed Gatto, Rowe '077, Rowe '909 and Nguyen and can find no teaching or suggestion of a discovery agent that publishes a service upon authentication and authorization of the service in a wagering game network. As a result, the combination of Gatto, Rowe '077, Rowe '909, Wesley and Nguyen fails to teach or suggest each and every element of Appellant's claims 1, 8, 13, 20 and 27. Therefore there are differences between claims 1, 8, 13, 20 and 27 and the cited references. In view of these differences, claims 1, 8, 13, 20 and 27 are not obvious in view of Gatto, Rowe '077, Rowe '909, Wesley and Nguyen. Appellant respectfully requests reversal of the rejection of claims 1, 8, 13, 20 and 27.

Furthermore, "[a] factfinder should be aware. . . of the distortion caused by hindsight bias and must be cautious of argument reliant upon *ex post* reasoning." *KSR Int'l Co.* at 1397. *See also Graham* at 474. The Examiner cannot use the Appellant's structure as a "template" and simply select elements from the references to reconstruct the claimed invention. *In re Gorman*, 933 F.2d 982, 987, 18 U.S.P.Q.2d (BNA) 1885, 1888 (Fed. Cir. 1991).

The Final Office Action uses no fewer than five references in the rejection of claims 1-31. This is highly suggestive that the Examiner is using Appellant's disclosed structure as a template and selecting individual elements from each reference in a hindsight reconstruction of Appellant's claimed invention. Further, the use of individual elements from the five references suggests that the Examiner is merely considering whether the differences are obvious, not the invention as a whole.

In the "Response to Arguments" portion, the Final Office Action states "the examiner can not allow on the basis of an instant application that uses to [sic] a plethora of well known devices and methods to achieve a previously stated purpose." In response, Appellant notes that the Federal Circuit has stated: "Virtually all inventions are combinations of old elements. . . . If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention." *Yamanouchi Pharmaceutical Co. v. Danbury Pharmacal Inc.*, 56 U.S.P.Q.2d

1641, 1644 (Fed. Cir. 2000), quoting *In re Rouffet*, 149 F.3d 1350, 1357-1358, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998).

Claims 2-7 depend from claim 1; claims 9-12 depend from claim 8; claims 14-19 depend from claim 13; claims 21-26 depend from claim 20 and claims 28-31 depend from claim 27. These dependent claims are patentable over Gatto, Rowe '077, Rowe '909, Wesley and Nguyen for the reasons argued above, and are also patentable in view of the additional elements which they provide to the patentable combination. If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is also nonobvious. MPEP § 2143.03.

SUMMARY

For the reasons argued above, claims 1-31 were not properly rejected under 35 U.S.C. § 103(a) as being obvious over Gatto, Rowe '077, Rowe '909, Wesley and Nguyen.

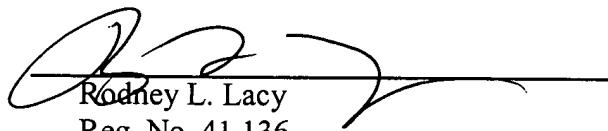
It is respectfully submitted that the art cited does not render the claims obvious and that the claims are patentable over the cited art. Reversal of the rejections and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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Date May 6, 2009

By



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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 6th day of May 2009.

Name R. Lacy, C. C. L.



R. Lacy
Signature

8. CLAIMS APPENDIX

1. A method for providing a game update service in a gaming network, the method comprising:
 - sending service information for the game update service from the game update service to a discovery agent on the gaming network, wherein the game update service provides game content for a plurality of gaming machines on the gaming network, wherein in response to a wager at a gaming machine of the plurality of gaming machines the gaming machine depicts indicia representative of a randomly selected outcome of a wagering game;
 - determining by the discovery agent if the game update service is authentic and authorized;
 - in response to determining that the game update service is authentic and authorized, publishing the service information to a service repository to make the game update service available on the gaming network;
 - receiving by the discovery agent a request for the location of the game update service from the gaming machine;
 - returning the service information for the game update service to the gaming machine;
 - using the service information for the game update service to register the gaming machine with the game update service;
 - verifying that the gaming machine is authorized to utilize the game update service; and
 - processing one or more service requests between the gaming machine and the game update service to provide game content on the gaming machine.

2. The method of claim 1, wherein the game update service comprises a web service.
3. The method of claim 1, wherein the service request comprises a request by the gaming machine for notification of a game content update.

4. The method of claim 3, further comprising:
 - receiving a game content change; and
 - issuing a notification of the game content update to the gaming machine in response to the game content change.
5. The method of claim 1, wherein the service request comprises a request to download game content to the gaming machine.
6. The method of claim 5, wherein the service request is initiated by the gaming machine.
7. The method of claim 5, wherein the service request is initiated by the game update service.
8. A method for updating game content on a gaming machine via a game update service in a gaming network, the method comprising:
 - issuing a request from the gaming machine to a discovery agent to discover a service description for the game update service, wherein the discovery agent receives the service description from the game update service and authenticates and authorizes the game update service, and wherein in response to a wager the gaming machine depicts indicia representative of a randomly selected outcome of a wagering game;
 - receiving the service description from the discovery agent;
 - using the service description to register the gaming machine with the game update service, wherein the game update service verifies that the gaming machine is authorized to utilize the game update service; and
 - processing one or more service requests between the gaming machine and the game update service.
9. The method of claim 8, wherein the game update service comprises a web service.

10. The method of claim 9, wherein the service description comprises a web services description language.
11. The method of claim 8, wherein the service request comprises a request for notification of a game content update.
12. The method of claim 11, further comprising:
 - receiving a notification that game content has been updated; and
 - issuing a request to download the game content.
13. A gaming network system providing a game update service, the gaming network system comprising:
 - a game update service communicably coupled to a gaming network, wherein the game update service provides game content to a plurality of gaming machines on the a gaming network; and
 - a discovery agent communicably coupled to the gaming network, wherein the discover agent is operable to:
 - receive service information from the game update service,
 - determine if the game update service is authentic and authorized for the gaming network, and
 - publish the service information to a service repository to make the game update service available on the gaming network;
 - wherein at least one gaming machine of the plurality of gaming machines communicably coupled to the gaming network is operable to issue a request for the location of the progressive service to the discovery agent and user the service information received from the discovery agent to issue a registration request to the game update service; and
 - wherein the game update service is operable to:
 - receive registration requests from the at least one gaming machine,
 - verify that the at least one gaming machine is authorized to utilize the game update service, and

process service requests between the gaming machine and the game update service.

14. The gaming network system of claim 13, wherein the game update service comprises a web service.

15. The gaming network system of claim 13, wherein the service request comprises a request by the gaming machine for notification of a game content update.

16. The gaming network system of claim 13, wherein the game update service is further operable to:

receive a game content change; and

issue a notification of the game content update to the gaming machine in response to the game content change.

17. The gaming network system of claim 13, wherein the service request comprises a request to download game content to the gaming machine.

18. The gaming network system of claim 17, wherein the service request is initiated by the gaming machine.

19. The gaming network system of claim 17, wherein the service request is initiated by the game update service.

20. A computer-readable medium having computer executable instructions for performing a method for providing a game update service in a gaming network, the method comprising:

sending service information for the game update service from the game update service to a discovery agent on the gaming network, wherein the game update service provides game content for a plurality of gaming machines on the gaming network, wherein in response to a

wager at a gaming machine of the plurality of gaming machines the gaming machine depicts indicia representative of a randomly selected outcome of a wagering game;

 determining by the discovery agent if the game update service is authentic and authorized;

 in response to determining that the game update service is authentic and authorized, publishing the service information to a service repository to make the game update service available on the gaming network;

 receiving by the discovery agent a request for the location of the game update service from the gaming machine;

 returning the service information for the game update service to the gaming machine;

 using the service information for the game update service to register the gaming machine with the game update service;

 verifying that the gaming machine is authorized to utilize the game update service; and

 processing one or more service requests between the gaming machine and the game update service.

21. The computer-readable medium of claim 20, wherein the game update service comprises a web service.

22. The computer-readable medium of claim 20, wherein the service request comprises a request by the gaming machine for notification of a game content update.

23. The computer-readable medium of claim 22, wherein the method further comprises:
 receiving a game content change; and
 issuing a notification of the game content update to the gaming machine in response to the game content change.

24. The computer-readable medium of claim 20, wherein the service request comprises a request to download game content to the gaming machine.

25. The computer-readable medium of claim 24, wherein the service request is initiated by the gaming machine.

26. The computer-readable medium of claim 24, wherein the service request is initiated by the game update service.

27. A computer-readable medium having computer executable instructions for performing a method for updating game content on a gaming machine via a game update service in a gaming network, the method comprising:

issuing a request from the gaming machine to a discovery service to discover a service description for the game update service, wherein the discovery service receives the service description from the game update service and authenticates and authorizes the game update service, and wherein in response to a wager the gaming machine depicts indicia representative of a randomly selected outcome of a wagering game;

receiving the service description from the discover agent;

using the service description to register the gaming machine with the game update service, wherein the game update service verifies that the gaming machine is authorize to utilize the game update service; and

processing one or more service requests between the gaming machine and the game update service.

28. The computer-readable medium of claim 27, wherein the game update service comprises a web service.

29. The computer-readable medium of claim 27, wherein the service description comprises a web services description language.

30. The computer-readable medium of claim 27, wherein the service request comprises a request for notification of a game content update.

31. The computer-readable medium of claim 30, wherein the method further comprises:
receiving a notification that the game content has been updated; and
issuing a request to download the game content.

9. EVIDENCE APPENDIX

None.

10. RELATED PROCEEDINGS APPENDIX

None.